International Brotherhood of Electrical Workers, Local 26, AFL–CIO *and* The Washington Post Company and International Typographical Union, Columbia Typographical Union, No. 101, AFL–CIO. Case 5–CD–275

13 February 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by the Washington Post Company, herein also called the Employer, alleging that International Brotherhood of Electrical Workers, Local 26, AFL–CIO (herein called IBEW, Local 26), had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees it represented rather than to employees represented by International Typographical Union, Columbia Typographical Union, No. 101, AFL–CIO (herein called CTU–101).

Pursuant to a notice, a hearing was held before Hearing Officer Albert J. Pietrolungo on 12, 17, 18, 19, and 24 May 1983. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the hearing officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the record in this proceeding, the Board makes the following findings.

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a Delaware corporation, with its principal place of business in Washington, D.C., is engaged in the publication of a daily newspaper in Washington, D.C. During the past year, in the course and conduct of its business operations, the Employer derived gross revenues in excess of $200,000 and regularly printed advertisements of products which are nationally advertised and sold, published nationally syndicated articles and news stories, and shipped newspapers to points outside the District of Columbia. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANZIATION INVOLVED

The parties stipulated, and we find, that IBEW, Local 26, and CTU–101 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

In 1974 the Washington Post initiated a program of conversion from hot type production to cold type production. This transformation was the result of technological advances which have had a revolutionary impact on commercial printing and which have resulted in similar conversions throughout the newspaper industry. As a result of, and in conjunction with, the conversion to cold type methods, a computerized technology has replaced traditional forms of production, and the introduction of Video Display Terminals (VDTs) either of a type having self-contained internal microprocessors (smart terminals) or a type which operates in association with main frame computers (dumb terminals) has required a broad range of new skills to cope with operation, production, and maintenance. A number of specialized systems are now operative and involved in the Employer's daily production, and these include approximately 750 VDTs located on 4 floors of the Washington Post building.

Following installation of each system a contract with each vendor specified a period during which the vendor would perform the maintenance. In contemplation of the termination of vendor maintenance, the Employer established a technical services department in 1981, which was responsible for maintenance of current electronic equipment (including those systems already installed and currently maintained by vendors) and future systems, except for those systems located in the fourth floor composing room. For many of the in-place systems, technical services department electricians were jointly responsible for maintenance, along with vendor personnel, and were trained in a hands-on manner, side by side with vendor technicians.

The Employer began assigning VDT maintenance work to the technical services department electricians, represented by IBEW, Local 26, in April 1982. On 6 April 1982 CTU–101 filed a grievance with the Washington Post claiming a violation of the supplemental agreement between the Post and CTU–101 by the Post's assignment of VDT maintenance outside the composing room to technical services department electricians repre-

sented by IBEW, Local 26. On 1 December 1982 CTU-101 informed the Post that it would seek arbitration of its claim. The arbitration has been in abeyance since the filing of the 8(b)(4)(D) charge which has culminated in the instant proceeding.

B. *The Work in Dispute*

The work in dispute involves maintenance of Video Display Terminals (VDTs) at the Employer's 1150 15th Street, N.W., facility in Washington, D.C.

This work includes the Ray Edit News System located in the fifth floor newsroom (299 VDTs), the 5 Ray Edit VDTs on the fourth floor, The Harris News System, including 50 VDTs in the fifth floor newsroom and 1 VDT on the fourth floor. Additionally, the maintenance of the 89 Telcon Portable VDTs is in dispute. Maintenance of the classified SII system, in the sixth floor classified phone room and including 171 VDTs, is in dispute, as well as maintenance of the 5 VDTs classified SII located on the fourth floor but outside the composing room. Finally, maintenance of the single VDT on the ADES system located on the fourth floor outside the composing room is in dispute. In sum, the maintenance work on the total of 621 VDT units is at issue in the instant dispute.[1]

C. *The Contentions of the Parties*

The Employer contends that a jurisdictional dispute exists and that its assignment of maintenance work on VDTs, except for those located in the composing room, to the electricians represented by IBEW, Local 26, is supported by the collective-bargaining agreements, skill and training of the electricians, the Employer's assignment and preference, area and industry practice, job impact, and efficiency and economy of operations.

IBEW, Local 26, contends that a jurisdictional dispute exists and that the work in dispute should be performed by employees represented by IBEW, Local 26, on the basis of collective-bargaining agreements, skills and training, assignment of work, area and industry practice, efficiency and economy of operations, job impact, and employer preference.

CTU-101 asserts that there is no probable cause to believe that Respondent Union IBEW, Local No. 26, has violated Section 8(b)(4)(D) of the Act because there was no bona fide threat to put improper pressure on the Employer over a work assignment dispute. CTU-101 further asserts that machinists it represents should be assigned the work in dispute on the basis of the collective-bargaining agreements, comparable skill, area and industry practice, economy and efficiency of operations, and because the equipment in dispute was substituted for equipment previously maintained by employees represented by CTU-101.

D. *Applicability of the Statute*

Before the Board may proceed with determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated, and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

Section 8(b)(4)(D) of the Act provides in pertinent part:

> (b) It shall be an unfair labor practice for a labor organization or its agents—
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> . . . .
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> (4) . . . (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:
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> (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization . . . rather than to employees in another labor organization . . . unless such employer is failing to conform to an order or certification of the Board determining the bagaining representative for employees performing such work
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> . . . .

CTU-101 contends that there is no reasonable cause to believe that a violation of Section 8(b)(4)(D) of the Act has occurred. CTU-101's assertion is premised on two contentions: First, that IBEW, Local 26, and the Employer acted in collusion to formulate the threat in order to invoke the Board's jurisdiction; and, second, that IBEW, Local 26, had no intention to carry out its threatened strike.

CTU-101's contention that the Employer and IBEW, Local 26, acted in collusion is unsupported in the record. CTU-101 has relied primarily on the

[1] The Employer filed a motion to amend the charge and notice of hearing to include maintenance work on main frame computers and related equipment. The motion was denied by the regional director. Therefore, the main frame computers and other equipment related to the VDTs in dispute are not included in the dispute and are not subject to this decision.

Additionally, the parties have stipulated that a number of VDTs are not in dispute: The electricians represented by IBEW, Local 26, are not claiming maintenance work on VDTs and equipment located in the fourth floor composing room, including 10 VDT units on the Ray Comp Make-Up System, 17 VDT units on the Ad Data Entry System (ADES), and 2 classified SII VDT units, all located in the composing room. The parties have also stipulated that the maintenance work on the 64 VDT units found in the sixth floor circulation room is not in dispute. CTU-101 has further stipulated that it is not claiming VDT maintenance work on the business functions system located on the seventh floor and including 40 VDTs. Finally, CTU-101 has stipulated that it is not claiming maintenance work on the business system located in the ad services area of the fourth floor, outside the composing room, and including six VDTs.

testimony of Lawrence A. Wallace, the Employer's vice president for industrial relations, who testified that on a number of occasions he brought CTU-101's request for arbitration to the attention of IBEW, Local 26. Although IBEW, Local 26, initially did not act on Wallace's information it eventually took his advice to consult outside counsel regarding the possible adverse impact of CTU-101's impending arbitration. Following this consultation IBEW, Local 26, submitted to the Employer a letter stating that it was prepared to take any appropriate action, "including striking and picketing in order to protect its contractual jurisdiction . . . ."

These facts indicate only that the Employer was aware of the possible impact that arbitration of CTU-101's grievance regarding work assignment might have on IBEW, Local 26, not that the Employer's concern necessarily was collusive. The Employer could reasonably have feared that CTU-101's arbitration would trigger collateral litigation. For while IBEW, Local 26, did not seem particularly concerned with the impending arbitration between the Employer and CTU-101 at the time the Employer first raised it, IBEW, Local 26's response was that no action was necessary until actual harm or damage occurred. Therefore, IBEW, Local 26, declined to join in tripartite arbitration but did not disclaim any future cause of action which might result from the arbitration. Thus, even if the Employer's notice to IBEW, Local 26, was premised on the expectation of a response, this fact does not undermine the validity of that Union's threat nor does it warrant a finding of collusion. See *Broadcast Employees NABET Local 16 (American Broadcasting Co.)*, 227 NLRB 1462 (1977). In short, the record as a whole provides insufficient basis from which to conclude that the Employer acted in collusion with IBEW, Local 26, to avoid arbitration and to contrive a violation of Section 8(b)(4)(D) of the Act.

CTU-101 also argues that no violation of Section 8(b)(4)(D) of the Act occurred because IBEW, Local 26, did not intend to carry out the threatened strike. A collateral and related argument it advanced is that no violation of Section 8(b)(4)(D) of the Act occurred because IBEW, Local 26, failed to abide by its own bylaws and constitution in making the strike threat. However, only a finding of "reasonable cause to believe" that a violation of Section 8(b)(4)(D) of the Act occurred is necessary in order for the Board to proceed pursuant to Section 10(k) of the Act. See *Operating Engineers Local 18 (Mayer Corp.)*, 184 NLRB 134 (1970); *Broadcast Employees, Local 16*, supra. The Board is mandated to act on the threat of a work stoppage, not to wait for the fullfillment of that threat. Additionally, that a union may choose to act in a manner beyond the scope of its constitution does not affect the Board's duties to make a determination pursuant to Section 10(k).

On the basis of the entire record, we find that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary resolution of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[2] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience reached by balancing those factors involved in a particular case.[3]

The following factors are relevant in making the determination of this dispute.

1. Collective-bargaining agreements

The Employer's collective-bargaining agreement with CTU-101 in effect at the time the instant dispute arose covers "all composing room work" and further stipulates that "Maintenance on all equipment under the jurisdiction of the Union shall be performed by employees covered by this contract." The contract also states that "whenever similar/like equipment is utilized for other than composing room purposes, employees outside the composing room may be assigned to operate such similar/like equipment for those other purposes."

The collective-bargaining agreement between IBEW, Local 26, and the Employer which, although by its terms had expired, continued in effect on a day-by-day basis states: "The jurisdiction of the Union recognized under this agreement shall consist of the maintenance and repair of electrical and electronic systems of the buildings occupied by the Washington Post Company" with the added caveat that: "It is not the intention to invade the recognized jurisdiction of any other union . . . ." Additionally, a supplemental agreement, incorporated into the collective-bargaining agreement by reference, states specifically that technical service department electricians will be primarily responsible for Harris and Ray Edit terminals in the

[2] *NLRB v. Electrical Workers, IBEW Local 1212 (Columbia Broadcasting System)*, 364 U.S. 573 (1961).

[3] *Machinists Lodge 1743 (J. A. Jones Construction Co.)*, 135 NLRB 1402 (1962).

News On-Line System; for Harris and Ray Edit terminals, News make-up 4th floor; and further classification on-line System.

CTU-101 contends that the IBEW, Local 26, agreement is entitled to no weight because it had expired. We reject this contention. At the expiration of the agreement, the parties continued to honor it while attempting to negotiate a new agreement. There was no disagreement concerning renewal of the jurisdictional provision. Considering, therefore, the Employer's contracts with each of the competing Unions, we have noted that the agreement between the Employer and CTU-101 contains a positive assignment of work only within the composing room, while the contract between the Employer and IBEW, Local 26, specifically covers electrical and electronic work outside the composing room, encompassing the work in dispute. Accordingly, this factor favors the assignment of the work in dispute to the employees represented by IBEW, Local 26.

2. Industry and area practice

The evidence offered regarding industry and area practice is inconclusive. IBEW, Local 26, offered evidence that several newspapers employ members of IBEW, Local 26, to perform electronic maintenance. CTU-101 offered evidence of International Typographical Union members performing electronic maintenance. Nevertheless, it appears the more common practice among area printers is to employ nonunion electronic maintenance personnel. Therefore, this factor favors neither Union.

3. Skills and training

The disputed work involves maintenance on VDTs and computer terminals which are integral parts of approximately eight computer systems installed at the Washington Post at various times since 1976. Because of the rapid rate of technological advances, the more recently installed systems are substantially more complex than earlier systems. Three levels of maintenance are required to maintain current systems: unit, board, and component level maintenance. The simplest, unit level, involves the removal and replacement of terminals when repair is necessary. Terminals are taken to the technical services department for repair, and replacement of defective terminals is performed quickly to minimize downtime. Board level maintenance is more complex, requiring the removal and replacement of electronic boards within the terminals which contain resistors, transistors, circuits, and other electronic parts. Board level maintenance requires troubleshooting in order to determine which boards are defective, but does not involve repair of the electronic parts. Component level maintenance, requiring the most skill, involves finding and correcting defects within malfunctioning boards.

In addition to three levels of maintenance, there are three types of maintenance, also in ascending order of difficulty. Preventive maintenance requires regularly scheduled and fairly routine procedures to prevent unit breakdown. Remedial maintenance is in response to unit malfunctions. Corrective maintenance involves the redesign of the components of a system to meet new needs or to incorporate new technology.

Both the machinists represented by CTU-101 and the electricians represented by IBEW, Local 26, are eligible for training pertinent to these functions, pursuant to their respective collective-bargaining agreements with the Employer. The IBEW electricians have taken much greater advantage of the available training, and as a result the majority of electricians are able to perform unit, board, and component level maintenance on even the most technologically sophisticated computer systems at the Washington Post. Only 3 of 13 CTU machinists appear able to perform unit, board, and component level maintenance, and then only the least sophisticated systems. Some of the electricians, but none of the machinists, are capable of corrective maintenance. The broader skills and more extensive training of the IBEW electricians constitute a substantial factor favoring assignment of the work to them.

4. Economy and efficiency of operations

The CTU machinists have guaranteed lifetime job tenure with the Washington Post as a result of the collective-bargaining agreement negotiated between the Employer and CTU-101 in 1973 and continuing in the current contract. The lifetime job guarantee was negotiated in exchange for CTU-101's relinquishment of the operation of scanners and VDTs outside the composing room. As a result of the lifetime job guarantee, should the work assignment in dispute not be assigned to employees represented by CTU-101, a number of machinists would be idle, and others would have little to do. This aspect of the economy and efficiency of operations appears to favor the CTU machinists.

However, the multitude of computer and VDT systems found at the Washington Post has required that those doing the maintenance and repair be highly skilled. As discussed earlier, the skill and expertise of the IBEW electricians in the technical services department significantly exceeds the skill and training of the CTU-101 machinists. Following the installation of a computer system at the Post,

the Employer has generally contracted with the vendor for maintenance services. Frequently included in the vendor maintenance contracts are provisions for side-by-side, hands-on training of technical services department employees represented by IBEW, Local 26, in order that these in-house electricians may begin providing maintenance at the expiration of the vendor maintenance contract. The work in dispute here is available for assignment only at that time. The electricians' hands-on training has permitted the Employer to expedite the changeover from vendor maintenance to in-house maintenance, and has resulted in savings estimated at $600,000 to date and projected to be $1.2 million over the next year.

Should maintenance be awarded to the CTU-101 machinists, the Employer would be forced to continue vendor maintenance slated to be turned over to IBEW, Local 26, electricians until CTU machinists could be properly trained, and, where maintenance has been turned over to IBEW electricians, vendor maintenance would have to be reinstituted. The cost of both continued and resumed vendor maintenance and of training CTU machinists would appear to outweigh the inefficiency potentially resulting from the machinists' idleness. Therefore, economy and efficiency favors an award of the work to employees represented by IBEW, Local 26.

5. Employer preference

The Employer has assigned the work in dispute to its employees represented by IBEW, Local 26. The record indicates that the Employer is satisfied with this assignment and continues to prefer this assignment. This factor, although not entitled to controlling weight, favors an award of the work to employees represented by IBEW, Local 26.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that the employees represented by IBEW, Local 26, are entitled to perform the work in dispute. We reach this conclusion relying on all the factors discussed above. In making this determination, we are awarding the work in question to employees who are represented by the International Brotherhood of Electrical Workers, Local 26, AFL-CIO, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute:

Employees who are represented by International Brotherhood of Electrical Workers, Local 26, AFL-CIO, are entitled to perform the work of maintenance of Video Display Terminals at the Employer's 1150 15th Street N.W., facility in Washington, D.C., which are not located in the fourth floor composing room. These include the 299 VDTs on the fifth floor Ray Edit News System, the 5 VDTs on the Ray Edit News System found on the fourth floor, the 50 VDTs on the Norris News System located on the fifth floor, the single VDT on the Norris News System located on the fourth floor, the 89 Telcon Portable VDTs, the 171 VDTs on the Classified SII System located on the sixth floor, the 5 VDTs on the Classified SII System located on the fourth floor, and the single VDT on the ADES System which is located outside the composing room on the fourth floor.